

SENATE BILL 125

E2
SB 1053/09 – JPR

0lr0913
CF HB 255

By: **Senators Brochin, Frosh, and Stone**
Introduced and read first time: January 15, 2010
Assigned to: Judicial Proceedings

Committee Report: Favorable with amendments
Senate action: Adopted
Read second time: February 23, 2010

CHAPTER _____

1 AN ACT concerning

2 **Criminal Procedure – Strip Search or Body Cavity Search of an Arrestee**
3 **– Restrictions**

4 FOR the purpose of prohibiting a police officer from conducting or supervising a strip
5 search or body cavity search of an individual arrested for certain misdemeanors
6 or traffic offenses under certain circumstances, or of a minor detained for a
7 certain act that would be a misdemeanor if committed by an adult or for certain
8 traffic offenses under certain circumstances; providing for certain exceptions;
9 authorizing a police officer to conduct or supervise a strip search or body cavity
10 search only if the officer has a reasonable suspicion that certain items may be
11 concealed by the individual or minor and the officer is granted authorization by
12 a ~~certain~~ supervising officer on duty; establishing certain requirements for the
13 conducting of a strip search or a body cavity search; requiring a medical
14 professional to conduct a body cavity search; providing that a complaint against
15 a police officer alleging a violation of this Act shall be investigated in accordance
16 with a certain law; providing that nothing in this Act limits or repeals a
17 common law or statutory right of an individual regarding an action for damages
18 or injunctive relief; defining certain terms; and generally relating to restrictions
19 on the conducting of a strip search or body cavity search of individuals arrested
20 under certain circumstances.

21 BY repealing and reenacting, without amendments,
22 Article – Criminal Procedure
23 Section 2–101(a) and (c)
24 Annotated Code of Maryland

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike-out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 (2008 Replacement Volume and 2009 Supplement)

2 BY adding to

3 Article – Criminal Procedure

4 Section 2–108

5 Annotated Code of Maryland

6 (2008 Replacement Volume and 2009 Supplement)

7 BY repealing and reenacting, without amendments,

8 Article – Public Safety

9 Section 3–101(a) and 3–104(a)

10 Annotated Code of Maryland

11 (2003 Volume and 2009 Supplement)

12 BY repealing and reenacting, with amendments,

13 Article – Public Safety

14 Section 3–101(e) and 3–104(c)

15 Annotated Code of Maryland

16 (2003 Volume and 2009 Supplement)

17 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
18 MARYLAND, That the Laws of Maryland read as follows:

19 **Article – Criminal Procedure**

20 2–101.

21 (a) In this title the following words have the meanings indicated.

22 (c) “Police officer” means a person who in an official capacity is authorized by
23 law to make arrests and is:

24 (1) a member of the Department of State Police;

25 (2) a member of the Police Department of Baltimore City;

26 (3) a member of the Baltimore City School Police Force;

27 (4) a member of the police department, bureau, or force of a county;

28 (5) a member of the police department, bureau, or force of a municipal
29 corporation;

30 (6) a member of the Maryland Transit Administration Police Force or
31 Maryland Transportation Authority Police Force;

- 1 (7) a member of the University of Maryland Police Force or Morgan
2 State University Police Force;
- 3 (8) a special police officer who is appointed to enforce the law and
4 maintain order on or protect property of the State or any of its units;
- 5 (9) a member of the Department of General Services security force;
- 6 (10) the sheriff of a county whose usual duties include the making of
7 arrests;
- 8 (11) a regularly employed deputy sheriff of a county who is
9 compensated by the county and whose usual duties include the making of arrests;
- 10 (12) a member of the Natural Resources Police Force of the Department
11 of Natural Resources;
- 12 (13) an authorized employee of the Field Enforcement Bureau of the
13 Comptroller's Office;
- 14 (14) a member of the Maryland–National Capital Park and Planning
15 Commission Park Police;
- 16 (15) a member of the Housing Authority of Baltimore City Police Force;
- 17 (16) a member of the Crofton Police Department;
- 18 (17) a member of the WMATA Metro Transit Police, subject to the
19 jurisdictional limitations under Article XVI, § 76 of the Washington Metropolitan Area
20 Transit Authority Compact, which is codified at § 10–204 of the Transportation
21 Article;
- 22 (18) a member of the Internal Investigative Unit of the Department;
- 23 (19) a member of the State Forest and Park Service Police Force of the
24 Department of Natural Resources;
- 25 (20) a member of the Department of Labor, Licensing, and Regulation
26 Police Force;
- 27 (21) a member of the Washington Suburban Sanitary Commission
28 Police Force;
- 29 (22) a member of the Ocean Pines Police Department;
- 30 (23) a member of the police force of the Baltimore City Community
31 College; or

1 (24) a member of the police force of the Hagerstown Community
2 College.

3 **2-108.**

4 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE
5 MEANINGS INDICATED.

6 (2) "BODY CAVITY" MEANS THE STOMACH OR RECTAL CAVITY OF
7 A MALE OR FEMALE INDIVIDUAL AND THE VAGINA OF A FEMALE INDIVIDUAL.

8 (3) "BODY CAVITY SEARCH" MEANS A PHYSICAL INTRUSION INTO
9 A BODY CAVITY TO DETERMINE THE PRESENCE OF A WEAPON OR A
10 CONTROLLED DANGEROUS SUBSTANCE CONCEALED IN THE BODY CAVITY.

11 (4) "CONTROLLED DANGEROUS SUBSTANCE" HAS THE MEANING
12 STATED IN § 5-101 OF THE CRIMINAL LAW ARTICLE.

13 (5) "POLICE OFFICER" INCLUDES:

14 (I) A LAW ENFORCEMENT OFFICER AS DEFINED IN § 3-101
15 OF THE PUBLIC SAFETY ARTICLE; AND

16 (II) A CORRECTIONAL OFFICER AT A LOCAL CORRECTIONAL
17 FACILITY, THE BALTIMORE CITY CORRECTIONAL CENTER, OR A DEPARTMENT
18 OF JUVENILE SERVICES FACILITY.

19 (6) (I) "STRIP SEARCH" MEANS AN OBSERVATION OF THE
20 UNCLOTHED BODY OF AN INDIVIDUAL TO DETERMINE THE PRESENCE OF A
21 WEAPON OR A CONTROLLED DANGEROUS SUBSTANCE.

22 (II) "STRIP SEARCH" INCLUDES A VISUAL INSPECTION OF A
23 BODY CAVITY.

24 (B) THIS SECTION DOES NOT APPLY TO A STRIP SEARCH OR A BODY
25 CAVITY SEARCH OF:

26 (1) AN INDIVIDUAL COMMITTED TO THE DIVISION OF
27 CORRECTION IN THE DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL
28 SERVICES;

29 (2) AN INDIVIDUAL COMMITTED TO A LOCAL CORRECTIONAL
30 FACILITY; OR

1 (3) A MINOR COMMITTED TO THE DEPARTMENT OF JUVENILE
2 SERVICES.

3 (c) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS
4 SUBSECTION AND SUBJECT TO THE PROVISIONS OF SUBSECTION (D) OF THIS
5 SECTION, A POLICE OFFICER MAY NOT CONDUCT OR SUPERVISE A STRIP
6 SEARCH OR BODY CAVITY SEARCH OF:

7 (i) AN INDIVIDUAL ARRESTED AND HELD IN CUSTODY FOR
8 A MISDEMEANOR OR TRAFFIC OFFENSE THAT DOES NOT INVOLVE WEAPONS,
9 CONTROLLED DANGEROUS SUBSTANCES, OR A CRIME OF VIOLENCE AS DEFINED
10 IN § 14-101 OF THE CRIMINAL LAW ARTICLE; OR

11 (ii) A MINOR DETAINED FOR AN ACT THAT WOULD BE A
12 MISDEMEANOR IF COMMITTED BY AN ADULT OR A TRAFFIC OFFENSE THAT DOES
13 NOT INVOLVE WEAPONS, CONTROLLED DANGEROUS SUBSTANCES, OR A CRIME
14 OF VIOLENCE AS DEFINED IN § 14-101 OF THE CRIMINAL LAW ARTICLE.

15 (2) SUBJECT TO SUBSECTION (D) OF THIS SECTION, A POLICE
16 OFFICER MAY CONDUCT OR SUPERVISE A STRIP SEARCH OR BODY CAVITY
17 SEARCH OF AN INDIVIDUAL OR A MINOR ONLY IF THE POLICE OFFICER:

18 (i) HAS A REASONABLE SUSPICION BASED ON
19 ARTICULABLE, SPECIFIC FACTS TO BELIEVE THAT THE INDIVIDUAL OR MINOR IS
20 CONCEALING A WEAPON OR A CONTROLLED DANGEROUS SUBSTANCE AND THAT
21 A STRIP SEARCH OR BODY CAVITY SEARCH WOULD RESULT IN THE DISCOVERY
22 OF A WEAPON OR A CONTROLLED DANGEROUS SUBSTANCE; AND

23 (ii) IS GRANTED AUTHORIZATION FROM ~~THE~~
24 ~~HIGHEST-RANKING~~ A SUPERVISING OFFICER ON DUTY.

25 (d) (1) (i) THIS PARAGRAPH APPLIES TO THE CONDUCTING OF A
26 STRIP SEARCH.

27 (ii) 1. A POLICE OFFICER OR AN AUTHORIZED
28 INDIVIDUAL PARTICIPATING IN CONDUCTING A STRIP SEARCH SHALL BE OF THE
29 SAME SEX AS THE INDIVIDUAL OR MINOR BEING SEARCHED.

30 2. A STRIP SEARCH SHALL BE CONDUCTED IN A
31 LOCATION WHERE THE SEARCH MAY NOT BE OBSERVED BY INDIVIDUALS NOT
32 PARTICIPATING IN THE SEARCH.

33 3. THE NUMBER OF INDIVIDUALS PARTICIPATING IN
34 A STRIP SEARCH SHALL BE LIMITED ONLY TO THE INDIVIDUALS NECESSARY TO
35 CONDUCT THE SEARCH.

1 **(2) (I) THIS PARAGRAPH APPLIES TO THE CONDUCTING OF A**
 2 **BODY CAVITY SEARCH.**

3 **(II) 1. A BODY CAVITY SEARCH SHALL BE PERFORMED**
 4 **BY A MEDICAL PROFESSIONAL AND CONDUCTED UNDER SANITARY CONDITIONS.**

5 **2. EXCEPT FOR A MEDICAL PROFESSIONAL, A**
 6 **POLICE OFFICER OR AN AUTHORIZED INDIVIDUAL PARTICIPATING IN**
 7 **CONDUCTING A BODY CAVITY SEARCH SHALL BE OF THE SAME SEX AS THE**
 8 **INDIVIDUAL OR MINOR BEING SEARCHED.**

9 **3. A BODY CAVITY SEARCH SHALL BE CONDUCTED IN**
 10 **A LOCATION WHERE THE SEARCH MAY NOT BE OBSERVED BY INDIVIDUALS NOT**
 11 **PARTICIPATING IN THE SEARCH.**

12 **4. THE NUMBER OF INDIVIDUALS PARTICIPATING IN**
 13 **A BODY CAVITY SEARCH SHALL BE LIMITED ONLY TO THE INDIVIDUALS**
 14 **NECESSARY TO CONDUCT THE SEARCH.**

15 **(E) A COMPLAINT AGAINST A POLICE OFFICER THAT ALLEGES A**
 16 **VIOLATION OF THIS SECTION SHALL BE INVESTIGATED IN ACCORDANCE WITH**
 17 **TITLE 3, SUBTITLE 1 OF THE PUBLIC SAFETY ARTICLE OR TITLE 11, SUBTITLE**
 18 **10 OF THE CORRECTIONAL SERVICES ARTICLE FOR A CORRECTIONAL OFFICER.**

19 **(F) NOTHING IN THIS SECTION MAY BE CONSTRUED AS LIMITING OR**
 20 **REPEALING A COMMON LAW OR STATUTORY RIGHT OF AN INDIVIDUAL**
 21 **REGARDING AN ACTION FOR DAMAGES OR INJUNCTIVE RELIEF.**

22 **Article – Public Safety**

23 3–101.

24 (a) In this subtitle the following words have the meanings indicated.

25 (e) (1) “Law enforcement officer” means an individual who:

26 (i) in an official capacity is authorized by law to make arrests;
 27 and

28 (ii) is a member of one of the following law enforcement
 29 agencies:

30 1. the Department of State Police;

31 2. the Police Department of Baltimore City;

- 1
 - 2
 - 3
 - 4
 - 5 corporation;
 - 6
 - 7
 - 8 agency;
 - 9
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 - 12 Resources;
 - 13
 - 14 Office;
 - 15
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 - 17
 - 18 Mental Hygiene;
 - 19
 - 20 Services;
 - 21
 - 22 and Regulation;
 - 23
 - 24 Maryland;
 - 25
 - 26
 - 27
3. the Baltimore City School Police Force;
 4. the Baltimore City Watershed Police Force;
 5. the police department, bureau, or force of a county;
 6. the police department, bureau, or force of a municipal
 7. the office of the sheriff of a county;
 8. the police department, bureau, or force of a bicounty
 9. the Maryland Transportation Authority Police;
 10. the police forces of the Department of Transportation;
 11. the police forces of the Department of Natural
 12. the Field Enforcement Bureau of the Comptroller's
 13. the Housing Authority of Baltimore City Police Force;
 14. the Crofton Police Department;
 15. the police force of the Department of Health and
 16. the police force of the Department of General
 17. the police force of the Department of Labor, Licensing,
 18. the police forces of the University System of
 19. the police force of Morgan State University;
 20. the office of State Fire Marshal;
 21. the Ocean Pines Police Department;

1 22. the police force of the Baltimore City Community
2 College; or

3 23. the police force of the Hagerstown Community
4 College.

5 (2) "Law enforcement officer" does not include:

6 (i) an individual who serves at the pleasure of the Police
7 Commissioner of Baltimore City;

8 (ii) an individual who serves at the pleasure of the appointing
9 authority of a charter county;

10 (iii) the police chief of a municipal corporation;

11 (iv) an officer who is in probationary status on initial entry into
12 the law enforcement agency except if an allegation of brutality in the execution of the
13 officer's duties is made **OR AN ALLEGATION OF A VIOLATION OF § 2-108 OF THE**
14 **CRIMINAL PROCEDURE ARTICLE IS MADE;**

15 (v) a Montgomery County fire and explosive investigator as
16 defined in § 2-208.1 of the Criminal Procedure Article;

17 (vi) an Anne Arundel County or City of Annapolis fire and
18 explosive investigator as defined in § 2-208.2 of the Criminal Procedure Article;

19 (vii) a Prince George's County fire and explosive investigator as
20 defined in § 2-208.3 of the Criminal Procedure Article;

21 (viii) a Worcester County fire and explosive investigator as
22 defined in § 2-208.4 of the Criminal Procedure Article; or

23 (ix) a City of Hagerstown fire and explosive investigator as
24 defined in § 2-208.5 of the Criminal Procedure Article.

25 3-104.

26 (a) The investigation or interrogation by a law enforcement agency of a law
27 enforcement officer for a reason that may lead to disciplinary action, demotion, or
28 dismissal shall be conducted in accordance with this section.

29 (c) (1) A complaint against a law enforcement officer that alleges
30 brutality in the execution of the law enforcement officer's duties **OR ALLEGES A**
31 **VIOLATION OF § 2-108 OF THE CRIMINAL PROCEDURE ARTICLE** may not be
32 investigated unless the complaint is sworn to, before an official authorized to
33 administer oaths, by:

- 1 (i) the aggrieved individual;
- 2 (ii) a member of the aggrieved individual’s immediate family;
- 3 (iii) an individual with firsthand knowledge obtained because
- 4 the individual was present at and observed the alleged incident; or
- 5 (iv) the parent or guardian of the minor child, if the alleged
- 6 incident involves a minor child.

7 (2) Unless a complaint is filed within 90 days after the alleged
 8 brutality **OR AN ALLEGED VIOLATION OF § 2–108 OF THE CRIMINAL PROCEDURE**
 9 **ARTICLE**, an investigation that may lead to disciplinary action under this subtitle for
 10 brutality **OR AN ALLEGED VIOLATION OF § 2–108 OF THE CRIMINAL PROCEDURE**
 11 **ARTICLE** may not be initiated and an action may not be taken.

12 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
 13 October 1, 2010.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.